

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JAMES DALE DUNCAN,

Petitioner

v.

CIVIL ACTION NO. 2:08-1220

DAVID BALLARD, Warden,
Mount Olive Correctional Complex,

Respondent

MEMORANDUM OPINION AND ORDER

Pending is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, filed October 24, 2008.

This action was previously referred to Mary E. Stanley, United States Magistrate Judge, who, on October 28, 2008, submitted her Proposed Findings and Recommendation ("PF&R") pursuant to the provisions of 28 U.S.C. § 636(b) (1) (B). On November 3, 2008, the petitioner filed objections to the PF&R.

The magistrate judge recommends that the petition be dismissed as a second or successive filing that has not been authorized by the United States Court of Appeals for the Fourth Circuit pursuant to Rule 9 of the Rules Governing Section 2254

Proceedings. Petitioner objects, essentially asserting the petition is timely and appropriate.

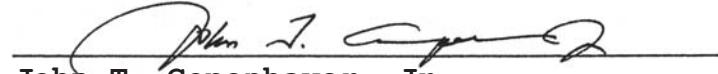
Inasmuch as (1) the court previously dismissed a section 2254 petition relating to the petitioner, on March 2, 2004, and (2) petitioner has not received authorization from the court of appeals for the instant, successive petition, the magistrate judge's recommendation is correct.¹ The court, accordingly, ORDERS as follows:

1. The PF&R be, and it hereby is, adopted by the court and incorporated herein;
2. The section 2254 petition be, and it hereby is, denied; and
3. This action be, and it hereby is, dismissed and stricken from the docket.

¹The court notes recent proceedings within a companion civil action filed by petitioner. In Duncan v. Ballard, No. 2:08-1304 (S.D. W. Va. Nov. 20, 2008), petitioner sought permission from the court of appeals to file a successive section 2254 petition. On March 6, 2009, the court of appeals denied the request. In re: Duncan, No. 09-120 (4th Cir. Mar. 6, 2009).

The Clerk is directed to forward copies of this written opinion and order to the pro se petitioner, all counsel of record, and the United States Magistrate Judge.

DATED: April 16, 2009


John T. Copenhaver, Jr.
United States District Judge